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November 22, 2004

Mary L. Cottrell, Secretary  
Department of Telecommunication and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02202

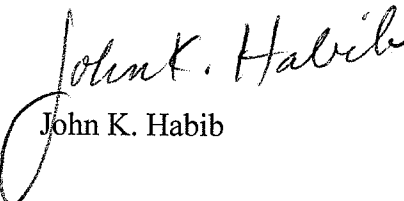
Re: Boston Edison Company, D.T.E. 04-68

Dear Secretary Cottrell:

Enclosed please find Boston Edison Company d/b/a NSTAR Electric's (the "Company") Revised Consolidated Motion for a Protective Order (the "Revised Consolidated Motion") in the above-referenced proceeding. The Revised Consolidated Motion includes references to three responses to record requests (RR-DTE-6 (Supp), RR-DTE-6 (Supp2) and RR-DTE-7), and related attachments, which were filed after the filing of the Company's October 26, 2004 Consolidated Motion for a Protective Order in this proceeding.

Thank you for your attention to this matter.

Very truly yours,

  
John K. Habib

Enclosures

cc: Service List  
Joan Foster Evans, Hearing Officer (2)  
Colleen McConnell, Assistant Attorney General (2)

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Boston Edison Company  
for Approvals Relating to the Assignment of  
Purchase Power Agreements with  
Ocean State Power and Ocean State Power II

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D.T.E. 04-68

**REVISED CONSOLIDATED MOTION OF BOSTON EDISON COMPANY FOR  
A PROTECTIVE ORDER<sup>1</sup>**

**I. INTRODUCTION**

On July 16, 2004, Boston Edison Company d/b/a NSTAR Electric ("Boston Edison" or the "Company") filed with the Department of Telecommunications and Energy (the "Department") a Petition (the "Petition") for Approvals Relating to the Assignment of Purchase Power Agreements (the "PPAs"). The Petition seeks approval by the Department, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, of: (1) the Purchase and Sale Agreement between Boston Edison and TransCanada Energy Ltd. ("TransCanada") that would assign Boston Edison's current purchase power contracts with Ocean State Power ("OSP 1") and Ocean State Power II ("OSP 2") (collectively, "OSP"), which are Rhode Island partnerships; and (b) approval of ratemaking treatment relating to the TransCanada Purchase and Sale Agreement.

During the proceeding, the Company filed several exhibits in response to information and record requests issued by the Department and the Office of the Attorney

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<sup>1</sup> This Motion is intended to supersede the Companies' Consolidated Motion for Protective Order filed on October 26, 2004 in this proceeding. It includes three responses to record requests, RR-DTE-6(Supp), RR-DTE-6(Supp2) and RR-DTE-7, and related attachments, which had not been filed at the time of the October 26, 2004 motion. This Motion seeks protective treatment for all confidential exhibits filed in the proceeding since its inception.

General (the “Attorney General”) that contained: (1) competitively sensitive information relating to the Companies’ 2003 Auction of its purchase power agreements (the “2003 Auction”), including information about (a) individual bids; (b) the Companies’ internal evaluations and analyses of bids; and (c) the Companies’ negotiating strategies (see Attachment 1, hereto). Moreover, as part of the Company’s initial filing and in response to information and record requests, Boston Edison submitted exhibits that, in part, include information regarding the Company’s projections of future energy prices and its forecasts of payments to be made pursuant to existing PPAs with OSP and PPAs with other parties (see Attachment 2, hereto). For the reasons set forth below, the Company seeks a protective order from the Department to prohibit public disclosure of the proprietary, confidential and sensitive competitive information listed in Attachments 1 and 2 (together, the “Confidential Exhibits”).

## **II. LEGAL STANDARD**

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

. . . [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

In practice, the Department has often exercised its authority to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, are subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Company's request to protect pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

**III. INFORMATION REGARDING BID INFORMATION AND THE COMPANY'S ANALYSIS OF FUTURE ENERGY COSTS IS PROPRIETARY, CONFIDENTIAL AND SENSITIVE AND WARRANTS PROTECTION FROM PUBLIC DISCLOSURE**

The Company requests confidential treatment of information reflected in the Confidential Exhibits relating to: (1) bids submitted in the 2003 Auction (see Attachment 1); and (2) price and payment forecasts used to compare the value of the bids to the Company's existing PPAs (see Attachment 2). The Company is seeking protected treatment for the Confidential Exhibits for several reasons.

First, with regard to the Confidential Exhibits listed on Attachment 1, these exhibits contain information regarding the names of bidders in the 2003 Auction, their respective bids, and communications between the Company, its consultant and the bidders themselves regarding the Company's bid-evaluation process. It is important that auction-related information be held confidential because its disclosure could harm financially the parties that participated in the 2003 Auction, as well as the interests of the Company's customers in other asset divestitures. The Company has treated the names of bidders, communications with the bidders and bid information and analysis (the "Auction Information") as confidential throughout the auction process. The Auction Information has been tightly controlled and has not been distributed outside of the Company, its consultant or the Company's counsel, jurisdictional public regulatory agencies, or, to the extent applicable, outside management or counsel of the bidders. All bidders were told that the auction process would be conducted in a highly confidential manner. The process was designed this way to encourage participation, promote competition in the bidding

process, and maximize the proceeds from the bidding. Any disclosure now could significantly damage the 2003 Auction. The Department should not allow the divestiture to be compromised by unnecessary disclosure of bid information.

Moreover, if the Auction Information is disclosed, the effectiveness and competitiveness of auctions for PPAs will be harmed substantially. Indeed, the Company may be required to commence the auction process again, if the agreements to terminate the Company's PPAs are not consummated for some unanticipated reason. In this case, the bids submitted in the 2003 Auction, if released, may make bidders more reluctant to submit responses in any subsequent auction. Thus, the release of auction or bid information at this time would potentially prejudice any future auction process and ultimately harm the Company's customers, to the extent that a future auction process fails to yield an interested buyer or yields a buyer that offers to purchase the Company's PPAs under less favorable terms than those offered to date.

In fact, public release of the information in the Confidential Exhibits will disclose the very types of information that the Department has previously and consistently held to be confidential because the release of such information would "seriously undermine" the Company's negotiating position and thus, result in customers not realizing the maximum amount of mitigation. Western Massachusetts Electric Company, D.T.E. 99-101, at 3 (2002), citing Boston Edison Company, D.T.E. 99-16 (1999); Western Massachusetts Electric Company, D.T.E. 99-56 (1999). See also Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34 (Tr. A at 19 (June 12, 2002)) and Cambridge Electric Light Company, D.T.E. 01-94 (May 9, 2002 Approval by the Department of Amended Motion of Cambridge Electric Light Company

for a Protective Order).

With regard to the Confidential Exhibits referenced in Attachment 2, the release of these exhibits to the public would compromise the ability of the Companies to negotiate future purchase-power deals. The market forecast data is considered proprietary by the company that produced it, and was provided to the Company pursuant to a confidentiality agreement. More importantly, however, these projections must be protected from public disclosure because the Company uses this information to evaluate other PPA mitigation proposals, and value their existing PPAs. The Company, as well as Cambridge Electric Light Company and Commonwealth Electric Company, have not yet completed the divestiture of all of their existing PPAs and are in active negotiations with other parties. If other parties had access to the details of the Company's updated projections and assumptions regarding future energy prices and the value of their existing PPAs, the Company's ability to negotiate the best deals possible on behalf of customers would be compromised.

Consistent with recent precedent, the Company requests that the Department protect the Confidential Exhibits listed in Attachment 1 from public disclosure for a period of ten years from the date of the Department's final order in this matter. Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34 (Tr. 1 at 12-13 (July 1, 2002)). In addition, the Company requests that the Department protect the Confidential Exhibits listed in Attachment 2 for a period of three years from the date of the Department's final order in this matter. Id. The Company recognizes that it is in the public interest to make submitted documents available to the public at some point in the future and believes that the respective ten- and

three-year periods balance: (1) the interests of the Company's customers and the parties to 2003 Auction with (2) the interest in making the material public.

Accordingly, both the information and the Company's strategic use of the information presented in the Confidential Exhibits should be protected from public disclosure through the issuance of a protective order because the information is proprietary, confidential and competitively sensitive. The disclosure of this sensitive information would undermine the Company's ability to maximize their mitigation efforts, which inures to the benefit of the Company's customers. The Department has protected similar information relating to analyses of the benefits of restructured or terminated PPAs submitted in previous proceedings. Therefore, the Company requests that the Department protect the Confidential Exhibits from public disclosure, consistent with G.L. c. 25, § 5 and Department precedent.

#### **IV. CONCLUSION**

Boston Edison respectfully requests that the Confidential Documents be held confidential, not be placed in the public docket and be disclosed only to the Department. Parties to the case may request to review the exhibits, subject to the terms of a mutually agreed Non-Disclosure Agreement. This approach will allow the Department and parties to the proceeding to review the Company's analysis of the TransCanada Purchase and Sale Agreement while ensuring that proprietary, confidential and sensitive market-related information will remain confidential.

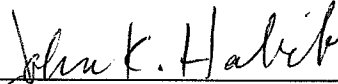


**WHEREFORE**, for the reasons set forth herein, the Company respectfully requests that the Department allow the Company's Motion for a Protective Order.

Respectfully submitted,

**BOSTON EDISON COMPANY**

By its Attorneys,

A handwritten signature in cursive script, appearing to read "John K. Habib", is written over a horizontal line.

Robert N. Werlin, Esq.  
John K. Habib, Esq.  
Keegan, Werlin & Pabian, LLP  
265 Franklin Street  
Boston, Massachusetts 02110  
(617) 951-1400 (telephone)  
(617) 951-1354 (facsimile)

Date: November 22, 2004

## **ATTACHMENT 1**

- Exhibit DTE-1-6 (Att);
- Exhibit DTE-1-7 (Att);
- Exhibit DTE-2-26 (Att);
- Exhibits AG-1-2 (a) (Att) through (i) (Att);
- Exhibits AG-1-3 (a) (Att) and (b) (Att); and
- Exhibits AG-1-5 (a) (Att) through (e) (Att).

## ATTACHMENT 2

- Exhibit NSTAR-BEC-GOL-3, pages 6 through 8;
- Exhibit NSTAR-BEC-GOL-4, pages 6 through 8;
- Exhibit NSTAR-BEC-GOL-5, pages 2 and 3;
- Exhibit NSTAR-BEC-GOL-6, pages 2 and 3;
- Exhibit NSTAR-BEC-GOL-7, pages 2 and 3;
- Exhibit NSTAR-BEC-GOL-8, pages 2 and 3;
- Exhibit NSTAR-RBH-6, pages 2 through 5;
- Exhibit DTE-1-1 (Att);
- Exhibits DTE-1-3(b)(Att) through (d)(Att);
- Exhibit DTE-1-11 (Att);
- Exhibit DTE-2-4 (Att);
- Exhibit DTE-2-6 (b) (Att)
- Exhibit DTE-2-13 (Att);
- Exhibit DTE-2-14;
- Exhibits AG-1-11 (a) (Att) and (b) (Att);
- Exhibit AG-1-14 (Att);
- Exhibits AG-1-15(a) (Att) and (b) (Att);
- Exhibit AG-1-22 (Att);
- Exhibit AG-1-26 (Att);
- Exhibit AG-1-30 (Att);
- Exhibit AG-2-5 (Att);
- Exhibits AG-3-3 (a) (Att) and (b) (Att);
- RR-AG-3(a) (Att) and (b) (Att);
- RR-DTE-4 (electronic version of Exh. AG-1-11(a));
- RR-DTE-4 (electronic version of Exh. AG-1-11(b));
- RR-DTE-4 (electronic version of Exh. AG-1-14);
- RR-DTE-4 (electronic version of Exh. AG-1-15); and
- RR-DTE-5
- RR-DTE-6 (Supp)
- RR-DTE-6 (Supp2)
- RR-DTE-6(a) (Att)
- RR-DTE-6(c) (Att)
- RR-DTE-6(e) (Att)
- RR-DTE-6(f) (Att)
- RR-DTE-7
- RR-DTE-7(a) (Att)
- RR-DTE-7(c) (Att)
- RR-DTE-7(d) (Att)
- RR-DTE-7(f) (Att)